IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

TUESDAY, THE 30TH JANUARY 2007 / 10TH MAGHA 1928

WP(C).No. 33487 of 2005(J)

PETITIONER:

R. SURESH KUMAR, RESEARCH ASSISTANT,
OFFICE OF THE DEPUTY DIRECTOR OF FISHERIES,
MALAMPUZHA, PALAKKAD DISTRICT.

BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.S.P.BALAKRISHNA PILLAY
SRI.PETER JOSE CHRISTO

RESPONDENTS:

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1. **STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, FISHERIES AND PORTS DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPRURAM.**

2. **THE DIRECTOR OF FISHERIES, VIKAS BHAVAN, THIRUVANANTHAPURAM.**

3. **THE DEPARTMENTAL PROMOTION COMMITTEE (HIGHER), DEPARTMENT OF FISHERIES, REPRESENTED BY ITS CONVENOR, SECRETARY TO GOVERNMENT FISHERIES DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER SRI. P. NANDAKUMAR for R1 to R3

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.33487/2005 J

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE ORDER NO.B.14684/2000 DTD. 10/05/2002 OF THE 2ND RESPONDENT.**

EXT.P1(A): **COPY OF THE RELEVANT EXTRACT OF THE APPENDED SENIORITY LIST OF RESEARCH ASSISTANTS AS ON 31/01/2000.**

EXT.P2: **COPY OF THE NOTIFICATION NO.A2-4963/2001 DTD. 2/11/2002 OF THE 3RD RESPONDENT.**

EXT.P3: **COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DTD. 13/01/2003.**

EXT.P4: **COPY OF THE ORDER NO.A2/15959/2001 DTD. 4/03/2003 OF THE SECOND RESPONDENT.**

EXT.P5: **COPY OF THE REPRESEENTATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DTD. 31/03/2003.**

EXT.P6: **COPY OF THE REMINDER DTD. 1/01/2004.**

EXT.P7: **COPY OF THE JUDGMENT IN WP(C) NO.6183/04-J DTD. 12/10/2004 OF THIS HON'BLE COURT.**

EXT.P8: **COPY OF THE NOTIFICATION NO.A2/2121/05 DTD. 10/08/2005 OF THE DIRECTOR OF FISHERIES, CONVENER, D.P.C.(LOWER).**

EXT.P9: **COPY OF THE RELEVANT EXTRACT OF THE NOTIFICATION IN G.O.(P) NO.27/2005/F&PD DTD. 2/08/2005.**

EXT.P10: **COPY OF THE REPRESEENTATION SUBMITTED BY THE PETITIONER BEFORE THE CONVENER, D.P.C. (HIGHER) DTD. NIL.**

EXT.P11: **COPY OF THE G.O.(RT) NO.444/2005/F&PD DTD. 12/08/2005.**

EXT.P12: **COPY OF THE REPRESEENTATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DTD. 16/11/2005.**

EXT.P13: **COPY OF THE REPRESEENTATION SUBMITTED BY THE PETITIONER BEFORE THE GOVERNMENT DTD. 16/11/2005.**

/TRUE COPY/

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K.K. DENESAN, J.

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W.P.(C) No.33487 OF 2005 J
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Dated this the 30th January, 2007

J U D G M E N T

The petitioner commenced service as Research Assistant, on the advice of the Kerala Public Service Commission, on 23-1-1999. In the provisional seniority list of Research Assistant he was assigned rank No. 53. When the seniority list was finalised on 10-5-2002, his rank was refixed as 49.

2. As per the Kerala Fisheries Service Rules issued in G.O.(MS) No. 594/62/PD dated 3-11-1962, Inspector of Fisheries, Fish Cultural Officers, Technical Assistants, Fish Farm Managers and Research Assistants in the Kerala Fisheries Subordinate Service are the feeder categories for recruitment by transfer to the post of Superintendent Fishermen Training Centre (FTC, for short). There shall be a ratio of 2:1 for recruitment by transfer between the categories of Inspector of Fisheries/Fish Cultural Officers/Technical Assistants/Fish Farm Managers and the category of Research Assistant.

3. The petitioner is qualified for the post of Superintendent, F.T.C by acquiring the requisite test qualification and the Staff Training Course (STC), as also satisfactory completion of probation in the category of Research Assistant.

4. Select list of officers eligible for appointment to the post of Superintendent, F.T.C. for the year 2001 was prepared by the Departmental Promotion Committee (Lower) for the Fisheries Department in its meeting held on 4-8-2001. Out of the 21 officers whose cases were placed for the consideration of the D.P.C., 11 officers were excluded from the purview of consideration. Therefore in the select list published in the Gazette dated 15-9-2001, 10 officers alone were included for appointment to the post of Superintendent, F.T.C. As per the Special Rules for the Kerala Fisheries Service, the cadre strength in the post of Superintendent, F.T.C. shall be maintained in the ratio of 2:1 between Inspector of Fisheries/Technical Assistants/Fish Cultural Officers/Fish Farm Managers and Research Assistants. Since 11 officers were excluded from the select list as

prepared by the D.P.C., there was practical difficulty in maintaining the ratio prescribed by the Special Rules while filling up the then existing vacancies of Superintendent, F.T.C. Hence, it was decided to revise the select list before filling the vacancies. Hence, an ad hoc meeting of the D.P.C. was held on 6-7-2002. The revised select list for the post of Superintendent, F.T.C. for the year 2001 prepared in the ad hoc meeting held on 6-7-2002 is as follows:

"1. Sri. S. Jayachandran	RA category
2. Sri. K.K. Satheeshkumar	RA category
3. Sri. Dinesan Cheruvat	RA category
4. Smt. R. Sandhya	RA category
5. Sri. O. Vasu.	IF/TA category
6. Sri. Subash Chandra Mohan	IF/TA category
7. Smt. M. Laila Beevi	RA category
8. Smt. D. Anithakumari	IF/TA category
9. Sri. P. Amalakumar	IF/TA category
10.Sri. S. Sreekumar	RA category
11.Sri. N.K. Venu	IF/TA category
12.Sri. M.J. Kurian	IF/TA category
13.Dr. K.K. Sutharam	RA category

14.Sri. Abdul Majeed IF/RA category

15. Sri. S. Gurudas IF/TA category

16. Smt. R. Sheela RA category."

5. The contentions of the petitioner may be summarised as follows: Dr. K.K. Sutharam (Sl. No. 13) shown above is admittedly junior to the petitioner. Hence, the petitioner is eligible to be included in Ext. P2 in the place assigned to Dr. K.K. Sutharam. It is admitted that the omission to include the name of the petitioner in Ext. P2 happened since the 'Notes' for revising the select list was processed before issuing the final seniority list of Research Assistant. Overlooking the right of the petitioner to get promotion to the post of Superintendent, F.T.C. in preference to Dr. K.K. Sutharam, Ext. P4 order dated 4-3-2003 was issued promoting almost all those who were included in Ext. P2 revised list. Sl. No. 7 M. Laila Beevi, Sl. No. 10 S. Sreekumar, Sl. No. 13 K.K. Sutharam and Sl. No. 16 R. Sheela, who are included in the revised select list for the post of Superintendent, F.T.C. have been included as Sl. Nos. 1 to 4 respectively in the revised select list for the post of

Research Assistant/Marine Survey Officer/Fresh Water Biologist vide Ext. P2. The manner in which the aforesaid persons have been promoted is discernible from the following portion extracted from Ext. P4:

> "Smt. M. Laila Beevi, the next person in the select list had already been promoted as Fresh Water Biologist from the select list of Research Officer/Marine Survey Officer/Fresh Water Biologist for the year 2001 as per this office proceedings order No. A2/15990/01 dt. 1-10-01.
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> Sri. S. Sreekumar, Dr. K.K. Sutharam and Smt. R. Sheela who were included in the revised select list of Fishermen Training Centre Superintendent have already been promoted as Research Officer from the select list of Research Officer/Marine Survey Officer/Fresh Water Biologist for the year 2001 vide this office proceedings order No. A2/15990/01 dt. 2-11-02, 6-1-2002 and 4-3-2003 respectively. Hence Smt. M. Laila Beevi, Sri. S. Sreekumar, Dr. K.K. Sutharam and Smt. R. Sheela who were included in the select list of Superintendent Fishermen Training Centre from Research Assistant category need not be posted as Superintendent Fishermen Training Centre.
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> The next person in the select list Smt. D. Anithakumari, Technical Assistant Fishermen Station Vizhinjam is promoted to the cadre of Superintendent Fishermen Training Centre and posted as Extension Officer (Fisheries), Office of the Deputy Director of Fisheries (Zonal) Thiruvananthapuram in the existing vacancy."

6. The question for consideration is as to how

the omission to include the petitioner in Ext. P2 shall be supplied and as to how and to what extent benefits shall be given to him as a measure of restoration of the rights lost to him by such omission. In order to work out the rights and benefits due to the petitioner consequent to his inclusion in the revised select list, it is necessary to refer to the occurrence of vacancies in the post of Superintendent, F.T.C. and the equivalent post of Research Officer.

7. Sl. Nos. 1 to 4, 7, 10, 13 and 16 in Ext. P2 revised list are from the feeder category of Research Assistants. Others are from other feeder categories. The select list is prepared applying the ratio of 2:1. Sl. Nos. 7, 10, 13 and 16 are included in the select list of Research Officer also. Relevant portion from Ext. P4 quoted above shows that they were promoted as Research Officers without being promoted as Superintendent, F.T.C. The above two posts are in the same rank and carry the same scale of pay. Hence, Sl. Nos. 7, 10, 13 and 16 need not be promoted as Superintendent, F.T.C. for appointment by transfer as Research Officers. Sl. Nos. 13 and 16 are admittedly

juniors to the petitioner in the feeder category of Research Assistant. Hence, they ought not to have been included in the select list without including the petitioner in that list and without assigning him a higher rank, had the omission been noticed at the appropriate time. It is indisputable that had the petitioner been included as Sl. No. 13 in Ext. P2, he would have been promoted as Superintendent, F.T.C. by Ext. P4 order dated 4-3-2003. Since Sl. Nos. 7 and 10 in Ext. P2 were already promoted as Research Officers, the petitioner would have been promoted instead of Sl. No. 8 in Ext. P2, by virtue of his rank (Sl. No. 13) in Ext. P2. However, the 2nd respondent-Director issued orders accommodating Smt. D. Anithakumari (Sl. No. 8 in Ext. P2) in the post that remained vacant consequent on the promotion of Smt. M. Laila Beevi (Sl. No. 7 in Ext. P2) as Research Officer. It is contended by counsel for the petitioner that the above action of the 2nd respondent is illegal and irregular because Sl. No. 7 in Ext. P2 is the slot meant for promoting a Research Assistant so as to maintain the ratio of 2:1 between the category of Inspectors and the category of Research

Assistants. As already noticed, Smt. Anithakumari (Sl. No. 8) was given promotion as Superintendent, F.T.C. as per Ext. P4.

8. The petitioner filed representations against the supersession. When no action was taken he approached this Court. As a result of the action taken by the petitioner and the directions he obtained from this Court, a review meeting of the D.P.C. was held on 13-7-2005 including the name of the petitioner against Sl. No. 13 in the same list for the post of Superintendent, F.T.C. for the year 2001. Ext. P8 is the notification issued by the Government approving the above select list. However, the grievance of the petitioner for appropriate promotion to the post of Superintendent, F.T.C. and the next higher post of Asst. Director of Fisheries from the due dates has not been redressed. He has therefore approached this Court with the above writ petition for a declaration that Ext. P4 to the extent his right for promotion was illegally overlooked, Ext. P9 to the extent his name was omitted to be included in the select list for the post of Asst. Director of Fisheries for the year 2005

and Ext. P11 to the extent he is denied promotion to the post of Asst. Director of Fisheries, are unsustainable and liable to be set aside. Other attendant benefits also have been prayed for.

9. The main contention taken in the counter affidavit filed on behalf of the 1st respondent is that none of the juniors of the petitioner in the category of Research Assistant was promoted as Superintendent, F.T.C. and as Asst. Director of Fisheries. It is, however, admitted that the petitioner is liable to be included as Sl. No. 13 in the select list for the post of Superintendent, F.T.C. for the year 2001 and that that right of the petitioner stands already restored in the review meeting held by the D.P.C. on 13-7-2005. According to the respondents, only those officers who are placed in the select list upto Sl. No. 8 were promoted as Superintendent, F.T.C. and that being the position the petitioner's contention is liable to be repelled.

10. The petitioner has filed a reply affidavit reiterating the stand taken in the writ petition.

11. Having heard counsel for the petitioner and

the Govt. Pleader for the respondents, I am of the opinion that the petitioner is entitled to get restoration of the rights he had lost as a result of the error committed by the department in not including his name in Ext. P2 select list. In the light of the indisputable fact that, but for that mistake or omission, the petitioner would have found his name in Ext. P2 against Sl. No. 13, he is entitled to say that whatever rights and benefits he could have enjoyed by virtue of that rank position in Ext. P2 shall be worked out and granted by the respondents. The fact that Dr. Sutharam happened to be included in Ext. P2 select list as Sl. No. 13 by sheer mistake on the part of the department and that Dr. Sutharam found a place in the revised select list for the post of Research Officers also and he got appointment by transfer to that post, cannot be taken advantage of by the respondents to deny the right of the petitioner on the ground that promotion to the post of Superintendent, F.T.C. was granted only upto Sl. No. 8 in that list. It cannot be disputed that the turn of Research Assistants reached upto Sl. No. 13 and if the petitioner was holding rank

No. 13 instead of Dr. Sutharam, he would have got promotion to the post of Superintendent, F.T.C. since he had no other avenue for promotion unlike Dr. Sutharam. It is also a fact which cannot be denied that had the petitioner been promoted as Superintendent, F.T.C. by virtue of his rank against Sl. No. 13, he would definitely have been promoted as per Ext. P4 proceedings. If that is so, the fact that the post of Superintendent, F.T.C. was declared supernumerary on a subsequent date cannot affect his right to be promoted as per Ext. P4 and that he would have continued as a supernumerary hand and could have worked out his rights by virtue of such appointment to the post of Superintendent, F.T.C. to the next higher post of Asst. Director. It follows that Ext. P4 order is illegal to the extent it has denied promotion to the petitioner to the post of Superintendent, F.T.C. There shall be a declaration that the petitioner is entitled to be promoted to the post of Superintendent, F.T.C. with retrospective effect from 4-3-2003, ie. the date from which Sl. No 8 in Ext. P2 select list was promoted to the post of Superintendent, F.T.C. The 2nd

respondent is directed to issue appropriate orders promoting the petitioner as Superintendent, F.T.C. with effect from 4-3-2003.

12. Ext. P9 has been drawn up without taking into account the fact that the petitioner is entitled to be treated as a member of the category of Superintendents, F.T.C. Therefore, the D.P.C. shall hold an ad hoc meeting to consider the case of the petitioner for transfer appointment to the post of Asst. Director of Fisheries for the year 2005. If the petitioner is found eligible to be included in Ext. P9, he shall be promoted as Asst. Director of Fisheries, with effect from the date of those already promoted as per Ext. P11, ie. 12-8-2005. Ordered accordingly.

13. Orders promoting the petitioner as Superintendent, F.T.C. with effect from 4-3-2003 with such benefits as are applicable to him according to law, within six weeks from the date of receipt of a copy of the judgment. Ad hoc meeting of the D.P.C. for considering the case of the petitioner for transfer appointment to the post of Asst. Director of Fisheries shall be convened within two months thereafter. The

entire exercise shall be completed within five months from the date of receipt of a copy of the judgment.

The writ petition is allowed as above.

K.K. DENESAN
JUDGE

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